E. I. duPont de Nemours & Company *and* DuPont Newport Union. Case 4-CA-13417

24 February 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 12 September 1983 Administrative Law Judge Thomas D. Johnston issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The Union has represented a unit of employees at the Company's Newport, Delaware plant for approximately 30 years. The parties' most recent collective-bargaining agreement expired in 1974. After the agreement terminated, the parties negotiated on individual subjects as the need arose and agreed on certain changes from the terms of the contract. In other respects, the parties continued to honor the contractual terms. Several attempts to negotiate a new agreement foundered, but negotiations began again in 1981. Active negotiations encompassed 14 months (excluding a 5-month hiatus pending a Board representation proceeding) and 47 sessions.

The parties bargained on an issue-by-issue basis rather than beginning with overall contract proposals. In May 1982, at the 30th bargaining session, the Company raised the issue of job movement—that is, the eligibility of employees to transfer to another job. Under the existing practice, which survived the expiration of the contract, an employee could bid on any available job, as often as he or she desired, and be awarded such job on the basis of seniority and ability. Within 30 days the Company could accept the bidder permanently for the new job or return him or her to the old job. Within 10 days on the new job, the employee could elect to return to the old job. The employee was free, in any event, to bid immediately on another job.

The Company indicated that the unlimited availability of job movement created serious training problems and reduced overall plant efficiency. At the next bargaining session, the Company set forth a general proposal on job movement. The gist of the proposal was that any employee accepted for a permanent job would not be eligible for another permanent job, except a promotion, for 12 months. A discussion followed in which some further exceptions were allowed, but the Company took the position that the 12-month restriction covered any employee who exercised the 10-day return privilege. The Union's initial counterproposal on job movement was that the existing practice be continued, unchanged.

As described more fully in the judge's decision, the parties continued to negotiate on job movement, along with other subjects, during 17 bargaining sessions before the Company implemented its latest proposal. In the course of these sessions some accommodations were made on each side, but the Company remained firm in its proposed 12-month restriction on most lateral job transfers and its position that exercise of the 10-day trial period was the equivalent of a transfer. The negotiations during these 17 sessions focused largely on job movement and the Company made it clear that it regarded implementation of a job movement restriction as a matter of the highest priority. On its part, the Union indicated that the job movement proposal was one of the main items preventing an agreement. The Union put forth counterproposals that accepted some limitation on job movement. It indicated, however (although the precise words used are in dispute and were not resolved by the judge), that it might continue to make counterproposals but would never accede to the Company's position. Although other contract terms were still open, the Company concluded that there was no prospect of reaching an agreement due to the deadlock over job movement. Thus, after informing the Union that it intended to do so, the Company implemented its proposal without the Union's agreement.

There is no question but that the Respondent unilaterally instituted the job movement proposal which had been offered to and rejected by the Union. The issue before us, then, is whether the parties had bargained to an impasse at the time the Respondent acted. For if impasse had been reached, the Respondent was free to implement its pre-impasse proposal. *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), petition for review denied 395 F.2d 622 (D.C. Cir. 1968). The Board has defined impasse as a state of bargaining at which the party asserting its existence is warranted in assuming that further bargaining would be futile. *Alsey Refractories Co.*, 215 NLRB 785 fn. 1 (1974); *Patrick & Co.*, 248 NLRB 390, 393 (1980). More specifically, we continue to follow the guidelines set forth in *Taft Broadcasting*, above, in determining the existence of an impasse:

> Whether a bargaining impasse exists is a matter of judgment. The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed.

Finally, there need be no undue reluctance to find that an impasse existed. Its occurrence "cannot be said to be an unexpected, unforeseen, or unusual event in the process of negotiations since no experienced negotiator arrives at the bargaining table with absolute confidence that all of his proposals will be readily and completely accepted." *Hi-Way Billboards*, 206 NLRB 22, 23 (1973).

The judge found that impasse had not been reached. He noted that, despite the extent and length of the negotiations, important subjects other than job movement, such as wages, were still open. The judge noted also that the Union continued to make substantive counterproposals on job movement until the end, while the Company was adamant. We disagree with his analysis. The length on negotiations is, of course, noteworthy and, considering the number of sessions at which this subject was discussed, indicates that the parties had exhausted the realistic possibility of reaching agreement. The Company's firmness, which no one claims to have constituted bad-faith bargaining, militates toward rather than against a finding of impasse, especially in light of the Union's indication that it would not accept the Company's proposal. See *Seattle-First National Bank*, 267 NLRB 142 (1983); *Times Herald Printing Co.*, 221 NLRB 225, 229 (1975). As for the existence of other open subjects, the Union gave no indication that it would concede on job movement in return for a favorable trade-off in another area or otherwise that its positions on this and other matters were interchangeable. Moreover, the subject of job movement had become of central importance to the parties by the time the Company acted. Because of the overriding importance of the issue, and because after long, hard negotiations the parties were still not close to reaching agreement on critical aspects of the job movement question, a finding of impasse is warranted irrespective of whether there was some movement in the parties' positions prior to the Respondent's implementation of its proposal, or whether the deadlock was produced by differences either on one or on many significant issues. *Taft Broadcasting*, above.

Clearly, the parties had adequate opportunity to discuss their differences by the time the Company acted. The Company negotiated long, hard, and in good faith over job movement, and gave the Union, in full, the bargaining opportunity to which it was entitled under the Act. *Eddie's Chop House*, 165 NLRB 861, 863 (1967). We find that the Company bargained to impasse before implementing its proposal and therefore did not violate Section 8(a)(5) as alleged. Accordingly, we shall dismiss the complaint.

ORDER

The complaint is dismissed.

DECISION

STATEMENT OF THE CASE

THOMAS D. JOHNSTON, Administrative Law Judge: This case was heard at Wilmington, Delaware, on June 6, 1983,[1] pursuant to a charge filed on December 20, 1982, by DuPont Newport Union (herein referred to as the Union) and a complaint issued on February 3.

The complaint alleges that E. I. du Pont de Nemours & Company (herein referred to as the Respondent) changed the working conditions of its unit employees by instituting a change in its rules concerning "job movement" at its Newport, Delaware plant without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees with respect to such change thereby failing and refusing to bargain collectively with the Union in violation of Section 8(a)(1) and (5) of the Act.

The Respondent in its answer dated February 3 denies having violated the Act as alleged.

The issue involved is whether the Respondent unlawfully refused to bargain with the Union in violation of Section 8(a)(5) and (1) of the Act by unilaterally, without affording the Union the opportunity to negotiate and bargain, instituting a change in its rules concerning "job movement" of its unit employees at the plant.

Upon the entire record in this case and from my observations of the witnesses and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following[2]

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a Delaware corporation with facilities located in the State of Delaware and other States of the United States, including a plant located at Newport, Delaware, is engaged in the manufacture of chemicals and related products.

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[1] All dates referred to are in 1983 unless otherwise stated.

[2] Unless otherwise indicated the findings are based on the pleadings, admissions, stipulations, and undisputed evidence contained in the record which I credit.

During the 12-month period preceding February 3 the Respondent in the course of its operations shipped goods, valued in excess of $50,000, from its Delaware facilities directly to customers located in other States of the United States.

The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

DuPont Newport Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Background and the Bargaining Unit*

The Respondent is engaged in the manufacture of chemicals and related products and operates a plant located at Newport, Delaware (herein referred to as the plant), which is the only plant involved in this proceeding.

On December 21, 1981, the Union was certified by the National Labor Relations Board (herein referred to as the Board) as the exclusive bargaining representative of the employees in the following described unit which is a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees employed by the Employer at its Newport, Delaware plant; excluding salary roll employees exempt under the provisions of the Fair Labor Standards Act, temporary or part-time employees, watchmen, secretaries to the plant manager, manufacturing manager and plant technical superintendent, clerical employees in the employee relations department, plant nurses, guards and supervisors as defined in the Act.

The Union has been and is now the certified and exclusive representative of the aforesaid unit employees for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

For approximately 30 years including both before and after its certification in 1981 the Union has represented the Respondent's unit employees at the plant. The last written collective-bargaining agreement between the Respondent and the Union covering the unit employees was executed by the parties on March 27, 1973, and was effective by its terms until March 31, 1974. Although it contained automatic renewal provision from year to year thereafter unless notice to terminate was given whereupon the agreement would terminate on the expiration date of the contract term in which notice was given, the Union on January 14, 1974, gave the Respondent timely written notice of its desire to terminate the collective-bargaining agreement.

During a meeting held on March 28, 1974, between representatives of the Respondent and the Union, the Respondent informed the Union that the collective-bargaining agreement would terminate on March 31, 1974, but as in the past the Respondent would not change "the terms and conditions of the current contract or other policies and practices which are now in effect unless changes are made following completion of our bargaining obligation." The Respondent further informed the Union it had no objection to operating without a contract as a contract was not necessary for good relationships betweem them or for continued treatment of employees.

Since the expiration of the collective-bargaining agreement in 1974 the terms and conditions of the agreement have with certain changes, which were negotiated and agreed to by the parties, continued in effect. However, no new collective-bargaining agreement has been executed. One change in the agreement was also made by the Respondent and implemented after negotiations over this one subject without agreement by the Union. This change as described by Gerald Ferguson, who is presently the supervisor of employee relations at the Glenolder Laboratory,[3] and as reflected in a letter to the Union dated November 1, 1979, dealt with temporary supervisors.

Before the most recent negotiations for a new collective-bargaining agreement which began on May 12, 1981, several attempts were made by the parties to negotiate a new collective-bargaining agreement. However, because of problems involving the ground rules for negotiations these attempts were unsuccessful.

Under article VIII, section 10 of the old collective-bargaining agreement job vacancies and new jobs are posted and bid on by the employees. Under section 11 if a successful applicant does not perform satisfactorily on a new job during a trial period of 30 workdays or less or who decides not to continue the job during the first 10 workdays or less he would go back to his former job. Section 3 provides that factors considered in transfers, promotions, demotions, terminations because of lack of work, and reemployment of former employees are seniority, ability, skill, efficiency, knowledge and training, and physical fitness.

The job movement procedure which was in effect at the plant prior to January 9 as credibly described, without dispute, by John Empson, who was an employee of the Respondent and served as a negotiator for the Union, was that as jobs became available they were posted and each employee had the opportunity to bid on them and the jobs were awarded based on seniority and qualifications. There was no limit on the number of times an employee could move to other jobs. The employees had a 10-day trial period to accept the job and if they rejected the job during that period they returned to their old job and the Respondent also had 30 days to accept them in the new job or they also were returned to their old job.

B. *Negotiations and the Unilateral Change in the Job Movement Procedure*

The most recent negotiations between the Respondent and the Union for a new collective-bargaining agreement lasted from May 12, 1981, until January 6. This consisted of 47 different meetings which varied in length from approximately 17 minutes to 3-1/2 hours.

[3] Prior to assuming this position on February 1, Ferguson was the senior supervisor of employee relations at the plant.

The first negotiation meeting was held on May 12, 1981. Besides a discussion of the ground rules for negotiations the Respondent noted its objective was to update the old collective-bargaining agreement and address additional items in need of refinement such as the job movement procedure. The Union's position was since the old agreement had expired such a long time ago and to use it as a guide would be difficult that both parties should start from scratch. The Union indicated it would negotiate on a section-by-section basis rather than submit a complete proposal for a new contract and requested that the Respondent submit a list of those articles it wanted placed in the contract.

The next meeting was held on May 14, 1981, at which there was further discussion concerning the ground rules for negotiations.

At the next meeting held on May 26, 1981, the Respondent indicated the existing article topics in the old agreement were adequate and it did not propose adding any additional articles in the new contract but felt the old agreement needed updating to reflect the current benefits and procedures. The Union submitted a list of titles only of proposed articles[4] it wanted included in the new agreement. This list was discussed and the Union indicated it would submit proposals for each of these 26 articles.

During the June 3, 1981 meeting the Union submitted its proposals on discipline,[5] arbitration, and discharge which were discussed along with the grievance procedure. The Respondent agreed to consider the Union's proposal and respond at the next meeting.

At the June 10, 1981 meeting the Union's proposals made at the previous meeting were discussed and the Respondent presented its position. However, no agreement was reached on those proposals. The Respondent also requested to see all of the Union's demands for an agreement claiming it was not possible to make a decision without first seeing them while the Union's position was it felt each section should be discussed and tentatively agreed on before going to other sections. The Union also requested the Respondent to make a contract proposal which request the Respondent agreed to consider.

During the next meeting held on June 18, 1981, the Union outlined its general demands for the various articles it wanted included in the new agreement. The Union's proposals on arbitration and discipline were also discussed but no agreement was reached. The Union also informed the Respondent it wanted a 2-year agreement with some of the Union's proposals being phased in over the length of the agreement.

The next meeting was held on June 23, 1981. The Respondent went over the old agreement article by article indicating those changes which had occurred since 1974. The Union then requested that the Respondent provide it with counterproposals to its previous proposals whereupon the Respondent replied it was still reviewing them and had questions which would require clarification. Upon the Union's asking verification of certain items, the Respondent informed it that would be discussed at a future meeting. The Respondent, pursuant to the Union's request, promised to provide it with a copy of the Respondent's discipline procedure at the next meeting.

During the June 25, 1981 meeting the Respondent furnished the Union with a copy of its discipline procedure which it said was in the process of being revised and informed the Union it was interested in its input. This procedure and the Union's proposal on discipline were discussed with each party stating their positions and objections. However, no agreement was reached. The Union then requested the Respondent to furnish it with certain information about the old agreement.

On July 7, 1981, the Respondent at this meeting furnished the Union with copies of its revised proposal for a new grievance procedure which the Union indicated seemed acceptable and would be submitted to the membership on July 15 for ratification. This procedure and its implementation, if adopted, were also discussed and the Union requested clarification on one section. The Union also submitted its counterproposal on a discipline procedure for the Respondent to consider.

During the July 17, 1981 meeting the Union informed the Respondent that the membership had voted and approved of the new grievance procedure proposed by the Respondent at the prior meeting which was subsequently confirmed by a letter from the Union to the Respondent dated August 6, 1981. The implementation of this procedure as it applied to pending grievances was also discussed and it was announced that the new procedure would be put into effect on August 1, 1981.

At the next meeting held on July 23, 1981, various matters were discussed including medical verification of 1-day disability absences, sixth-day payment of split days of vacation, the number of hours worked to obtain a meal allowance, and clarification of the bump-up rule. The Union's proposal on discipline was also discussed. The Respondent, unlike the Union, did not want a written record of verbal or informal contacts in the discipline procedure or a system involving fixed steps without considering the severity of the circumstance, the person's record, and other factors and informed the Union it would provide it with a revised procedure and solicit their comments. The Respondent, pursuant to the Union's inquiry regarding the arbitration and discharge proposals, advised the Union it was still considering the Union's proposal for a single arbitrator but it had no further comments to make on the discharge proposal.

During the July 28, 1981, meeting the Respondent responded to several of the Union's prior proposals. On arbitration it rejected the Union's proposal to use only one instead of three arbitrators as presently existed on the grounds the present system had worked very well in the past. Upon the Union's mentioning the need to speed up the processing of arbitration cases and to reduce costs, the Respondent suggested consideration should be given to establishing a time limitation between the last step of grievance and arbitration. On the Union's proposal regarding backpay for terminated employees to be reinstated after an arbitration hearing while the Respondent felt the current 60-day limit warranted further discussion it was opposed to unlimited backpay, as insisted on by the Union, on the grounds that uncontrollable variables are

[4] The old agreement only had 16 articles.
[5] The old agreement did not contain an article on discipline.

involved in arbitration timing. With respect to the Union's proposal on the discipline procedure the Respondent's position was to maintain the present formal three-step discipline procedure and informed the Union the discipline procedure was being revised and would later be presented to the Union but would not be put into the new agreement. The new procedure would take into account those concerns previously expressed by the Union. Also discussed during this meeting were issues raised earlier relating to the sixth-day overtime allowance, medical verification of disability days, and meal allowances with the Respondent promising to respond later.

The next meeting was held on August 4, 1981. However, the parties agreed at that time to suspend negotiations because of a representation petition pending before the Board regarding various sites operated by the Respondent including the plant. The Respondent did answer questions previously raised by the Union regarding the interpretation of provisions of the old agreement relating to medical verification of disability, meal allowances, and sixth-day payment for split days of vacation.

On December 16, 1981 the Union, by letter, requested the Respondent to reopen contract talks.

Bargaining resumed at a meeting held on February 10, 1982. The Union requested the Respondent to present its contract proposals. However, the Respondent replied it was not possible for it to do so until a list of union demands were received and reminded the Union it had previously agreed to do so. The Union then presented the Respondent with a list of 21 articles for contract negotiations. Included among those articles on the list which were discussed with the Union explaining or giving its reasons for wanting them were those relating to job assignments, bereavement pay, jury duty, health care, monetary seniority, outside contractors, safety, union activities, temporary supervisor, and fire brigade. The Respondent advised the Union it would consider such requests and later discuss them.

According to Union Negotiator Empson another union proposal on pension of "30 years and out regardless of age" which it also wanted spelled out in the contract was discussed briefly and rejected by the Respondent. Under the current pension plan, which the Respondent felt was adequate, benefits are not spelled out in the old agreement and an employee is penalized 5 percent for each year he retires under the age of 58.

Those matters discussed at the next meeting held on February 12, 1982, included the alcohol program; the fire brigade, whose function is to contain fires until the outside fire company arrives; and the safety committee. However, no agreement was reached on these proposals. This meeting had begun by the Respondent stating it was necessary to discuss the Union's list of contract demands presented at the last meeting in order to get clarification and justification from the Union along with the Respondent's response.

During the February 16, 1982, meeting the fire brigade was discussed with the Respondent informing the Union that its request for additional firefighting training was being given further consideration, but it rejected the Union's request for a volunteer fire brigade as well as hazardous duty pay for the fire brigade. The Respondent also rejected the Union's request to appoint union members to the plant management safety committee and accident investigation committee and to include language in the contract that employees are not required to work unsafe. Also discussed was the safety concern slip and the safety program and the Respondent explained the pay and the seniority credits for jury duty after pointing out that the Union had a misconception about it.

Another meeting was held on February 19, 1982, at which there was further discussion about the fire brigade and safety without any agreement being reached. The Union's request for a 5-percent and 10-percent shift differential was discussed with the Respondent indicating it would conduct a survey of local comparison companies and discuss it at the next meeting. On jury duty the Union's position was it wanted clarification of the procedure and to extend pay provisions to include those persons who received subpoenas to appear in court which request the Respondent agreed to consider. On funeral allowance the Union wanted the current policy expanded to 5 days and to additionally include stepparents, stepchildren and other relatives as noted in its proposal. The proposal was discussed but no agreement was reached. On meal allowance the Union proposed increasing it to $4.50 during the first contract year and to $5 the second year which the Respondent stated it would consider after reviewing the food cost in the cafeteria.

During the February 23, 1982, meeting the Respondent rejected the Union's proposal to place a safety statement in the contract and after providing the Union with a comparison of shift differentials with other area companies it rejected the increase in shift differential proposed by the Union and stated it would not offer a counterproposal on it. The Respondent informed the Union that no decision had been reached on an increase in the meal allowance and it had no further comment at that time on the Union's bereavement pay proposal. The Union explained under its holiday proposal it wanted two extra holidays including one as a personal holiday and the other one as Martin Luther King's birthday as well as a change in the selection procedure for personal holidays. The Respondent rejected the request for the two additional holidays but indicated it would investigate improving the procedure. The Union's proposal for removing the difference between nonexempt salary and wage roll service eligibility for a 1-week vacation was rejected. On lunch and rest periods the Union wanted a guaranteed rest period in the morning and afternoon and a paid 30-minute lunch period and that shift operators who were required to work through their eating time to be released earlier at the shift's end. Working hour guidelines were also discussed which the Union wanted suspended until a new procedure was negotiated which was rejected by the Respondent.

During this meeting the Union expressed its desire to stop negotiations until the Respondent presented its proposal on the issues already discussed. However, the Respondent's position was that such a proposal by the Respondent would not be appropriate until it understood

the Union's February 10, 1982 demands by clarification obtained at these meetings.

The next meeting was held on March 16, 1982, at which there was further discussion about the differences between nonexempt salary and wage roll service eligibility for a 1-week vacation, jury duty, and liberalizing personal holidays. On jury duty the Respondent proposed to excuse an employee with pay who had been subpoenaed as requested by the Union but only under certain conditions. The Union's response was the Respondent's counterproposal on this would be discussed and voted on at its March 17 union meeting. On liberalizing personal holidays the Union proposed changes in the guidelines which were discussed with the Respondent voicing its objections.

During the March 18, 1982, meeting the Union acknowledged a tentative agreement on the Respondent's proposal for payment of a subpoenaed witness and promised a formal answer later. The Union also made a proposal for a lunch break for employees called in to work overtime, explained their proposal on clothing to be furnished by the Respondent, and requested that a plant laundry be established to wash all clothes since washing them at home was unsafe. The Respondent's position was the safety policies and procedures they had were adequate safeguards for employees working with chemicals and this included safe cleanup and protection.

The next meeting was held on March 23, 1982. The Union again brought up its request concerning the 1-week vacation during the first year of employment for wage roll employees with the Respondent taking the position it would not change the current service requirement or change the vacation plan. The Respondent rejected the Union's request to physically include in the new contract the Respondent's proposal on payment of subpoenaed witnesses since it said this was an administrative procedure but promised that any future changes on it would be discussed with the Union. Clothing was discussed and the Respondent furnished a revision of its clothing policy and made a proposal on safety shoes. The Union also discussed its proposal concerning union activities. The Respondent rejected the Union's request to pay the union president for not working or to expand the maximum number of representatives to attend meetings with pay or to pay representatives to attend meetings on their off time. Outside contractors were discussed and while the Union wanted its president notified of such jobs the Repondent's position was to continue notifying the area representative as was presently being done instead.

Another meeting was held on March 25, 1982, at which various items were discussed. The Respondent rejected the Union's request to increase the number of union representatives authorized to attend plant information meetings and advised that under the current agreement up to 23 representatives would be released with pay to attend provided they could be spared from their work group. The Respondent rejected a union proposal to pay representatives for attending off-duty meetings beneficial to both parties. On the use of outside contractors the Respondent promised to further consider the Union's request that the union president be notified. Clothing and safety shoe proposals were discussed which the Respondent indicated it was willing to implement on April 1, if the Union agreed. The Union promised to consider that proposal at its March 31 union meeting. Regarding the discipline procedure the Respondent stated it was being revised and when completed it would be discussed with the Union. With respect to the Union's earlier request for full backpay for a discharged employee returning to work following arbitration the Respondent was agreeable to extending the current 60-day provision on backpay but rejected unlimited backpay because cases drag on. The parties disputed whether there was presently a 180-day limit on temporary upgrades to supervisor as the Respondent contended and the Union requested information to support it. On the proposal relating to industrial relations plans and practices the Respondent agreed to include the dental assistance plan and the total and permanent disability income plan in the contract listing of industrial relations plans and practices but rejected inclusion of TRASOP or tuition refund plan in the list as sought by the Union. The Union added these additional items to their demands: "one-half day single days of vacation with sufficient notice; holiday worked have choice of 3-1/2 times pay or 2-1/2 times pay and another day off as a personal holiday; inconvenience pay—when area shutdown over a holiday and employees are required to work on a normal day off to obtain 40 hours of work in a week; and provide 4 weeks of V/S with 10 years of service." The Respondent's position was it would not provide additional pay items above the current practices and would not change the current pension plan to provide retirement at 30 years regardless of age.

During the March 31, 1982, meeting the Respondent furnished the Union with its written proposal on the procedure for payment of a subpoenaed witness whereupon the Union asked that an additional guideline it proposed be added which the Respondent agreed to consider. The Union then requested the Respondent's position on certain items previously discussed. On proposed holiday payment and the lunch and rest periods the Respondent said they were still being considered. Regarding the one-half single days of vacation and inconvenience pay the Respondent rejected both of them. The Respondent stated it would be willing to notify the union president regarding outside contractor's work as the Union had proposed and would provide a written response. Safety shoes were also discussed with the Respondent agreeing to provide payment for safety shoe heel inserts and heel spacers when required for physical reasons and to see about discounts for shoe purchases at the Lehigh Stores.

A meeting was held on April 16, 1982. The Respondent informed the Union it was still looking into the Union's clothing request and during a discussion about shoes mentioned that discounts were available at the Lehigh Stores. The Respondent also agreed to consider the Union's request to stock some rubber boots. On personal holidays the Respondent stated it was willing to specify that selection of personal holidays be made on a first-come first-served basis and submitted a copy of the modified guidelines. The Respondent refused to change

the last selection date for personal holidays to November 25, to pay time and half for Sunday-personal holidays, or to allow employees to cash in personal holidays. It informed the Union it was willing to permit volunteers within areas to replace employees on the fire brigade and submitted a proposal but would not agree to send employees to the Delaware Fire School because they had a qualified trainer at the plant. The Respondent agreed to consider a request by the Union to change shifts for someone called to be a witness. On temporary supervisors the Respondent distributed language regarding them and, after questions were raised about their use by the Union, the Union promised to respond later. Regarding outside contractors the Respondent said it was still developing wording on it. On safety the Union raised certain objections to the safety concern program and proposed new slips and a time limit for the correction of the concerns. The Union also made other proposals including that when employees are assigned to open jobs for medical reasons the employees would keep their own rates of pay; all people performing at upgraded jobs ought to be paid at the top rate of these jobs; and the Union wanted to have more input on studies regarding the establishment of pay rates. It also wanted language put in the contract about the agreed-upon limit on overtime for people on light duty.

During a meeting held on April 23, 1982, there were further discussions about the proposals on the fire brigade, subpoenaed witnesses, safety concern slips, and shoes and clothing. The Respondent agreed to the Union's request to reissue the personal holiday guidelines to reflect scheduling on a first-come first-served basis. The Union also explained its demands on job classifications, job posting, vision care,[6] prescription drugs, Blue Cross-Blus Shield coverage, A & H Insurance, and dental insurance and it wanted increases in those existing various medical and insurance benefits. According to Union Negotiator Empson the Respondent's response was it thought their extended benefits were adequate and they did not need anything else.

The next meeting was held on April 27, 1982. After the Respondent furnished the Union with a copy of the plant safety manual, open items were discussed including job postings, rubber boots, subpoena policy, clothing and shoe policy, and safety concern. Other items from the Union's list of demands were then discussed. On the limited light duty pertaining to overtime the Union requested the current plant procedure be included in the contract. On its proposal for a service allowance of 10 cents per hour for every 5 years of company service, which the Union claimed would encourage employees to stay with the Company, the Respondent pointed out the existing benefits such as pension, vacation, and service emblem recognized and rewarded employee service. On company service and plant service the Respondent agreed to consider the Union's request to change the service rules so that employees who quit and later returned to work would have to work 10 years instead of 1 year before they could receive credit for their previous service. On job movement the Union requested that the current plant practice for change in schedules be included in the contract. On the Union's request for a 25-year anniversary dinner to be provided for each employee and a small group of their friends with dinners being held each 5 years thereafter or money provided instead, the Respondent pointed out that the Quarter Century Club had a dinner for all employees with 25 years or more of service. When the Union mentioned it had established a safety committee and requested regular meetings with the Respondent to negotiate safety rule changes, the Respondent indicated the Union's request was being reviewed. The Union also requested that a new contract include items agreed to during negotiations and the language changes requested by the Union during the negotiation meetings held in May.

During the April 30, 1982 meeting the Respondent made a reply proposal to the Union's proposal to reduce the number of CPC operators assigned to the fire brigade. Also discussed were items from previous meetings including job postings, plant service, single days of vacation for Sunday, personal holidays, safety concern, postponed holiday allowance, lunchtime for call in, union safety committee, clothing, and bereavement pay. The Union on vacation carryover additionally requested that the current vacation banking be changed to allow unlimited accumulation of vacation in the bank. No agreement was reached on these proposals many of which the Respondent indicated it was still considering.

The Respondent indicated at this meeting it would present its contract proposal the week of May 10.

The next meeting was held on May 28, 1982. The Respondent after mentioning that current business conditions dictated the need to improve overall plant efficiency informed the Union it felt there was a demanding necessity to discuss changes to the plant job movement sytem or procedure which it said created a real training problem and reduced overall plant efficiency prior to making its contract proposal. Although the Respondent stated it had no definite detail proposal to make at the time it mentioned certain points which were discussed and information was furnished that the Respondent supported plantwide bidding for all promotional opportunities; it did not propose eliminating the 10-day trial period; and it saw a need to restrict movement to lateral or lower-rated jobs to reduce training and improve plant efficiency. It defined promotional opportunity as a move to a higher pay rate or a move to a job at the same rate or lower rate but with the opportunity to advance to a higher rate through the job's progression system. Other discussions were a person who moved laterally or downward would have to wait a year before moving again; on movement to preferred jobs such as daywork an employee who had a laterally type movement would have to wait the prescribed time before moving again; on limits for movement to new jobs the rules would not be waived for jobs created through force additions or by adding jobs similar to current existing plant jobs but the rule would be waived for new jobs which were not similar to current jobs; and bumping would not be included as part of the job movement change.

[6] The Respondent at that time had no vision care benefits.

The Respondent also presented the Union with its proposal on the procedure for union notification of outside contractors.

Another meeting was held on June 1, 1981. The Respondent presented the Union with a list of its ideas for changing the existing job movement procedures. They were continued current posting practices; all employees may bid on open jobs; and employees accepted for a permanent job would not be accepted for another permanent job for a period of 12 months unless the job was a promotion or unless there were no other acceptable bids. Certain items on job movement was then discussed. The Union indicated the moves which resulted in preferred assignments such as daywork should be considered a promotion even though there was no rate increase and restricting nonpromotional moves would be too restrictive to mechanical personnel since most of them were at the senior mechanic level. The Respondent also informed the Union that bumping or involuntary moves would not be included in the restriction of one move in a 12-month period. Pursuant to the Union's inquiry the Respondent defined a "new job" as a job which had not existed prior to its posting which it explained to mean that a new operator position created in one of the manufacturing areas or a job at an existing operator level changed to reflect new work practices but it did not include forced additions or increasing the number of existing jobs in a group. The Union objected to this definition. While the Respondent said it did not oppose any changes in the 10-day trial period it said a person accepting a job and then utilizing the 10-day trial period would have one job acceptance counted against his record for movement within the 12-month period to which the Union also voiced its objections.

The Union's position was the job movement discussion should also include upgrading, reclassification, and consideration of operating jobs in the plant which the Respondent stated it was not ready to discuss.

Other matters besides the job movement procedure were also discussed. On the length of the contract the Respondent wanted an "evergreen" contract which it described as one that continues in effect indefinitely unless either party gives notice to cancel it. Open items discussed again were the number of Sundays allowed in split vacation weeks; postponed holidays; lunch breaks on call-ins; union safety committee; fire brigade; outside contractors; and A & H Insurance.

The Respondent rejected the Union's request to allow the union safety committee to meet with pay during working hours to discuss safety and rule changes but offered to meet on an as-needed basis. It also rejected the Union's request to change the A & H Insurance payouts. The Union also proposed employees be granted 1-day's pay or 1 day off with pay for each year or perfect attendance beginning in 1983.

The next meeting was held on June 11, 1982. The Respondent presented the Union with its contract proposals which were then discussed. Items to be included besides those in the expired agreement were all of those that had been bargained and agreed to since 1974 when the old contract expired plus several new items in response to the Union's requests and a revision to the job movement procedure. These proposals were as follows: Add that in lieu of holiday pay allowance for a holiday worked, an employee may select another day off subject to holiday selection guidelines; allow shift workers to observe Saturday holidays on Saturday; change the Washington's birthday holiday to the day after Thanksgiving; include the two personal holidays currently in effect; add spouse of son or daughter to death in family allowance for maximum of 8 hours; increase meal ticket from $3.50 to $4.50; revise job movement procedure—employees may bid on any open job. However, employees who have bid and been accepted for a permanent job will not be accepted for another permanent job for 12 months unless the job is a promotion or there are no other acceptable bids; include current shift differential of 35 cents an hour and 55 cents an hour; include hospital and medical—surgical coverage currently provided; include the dental assistance plan and permanent disability income plan with the list of industrial relations plans and practices; include offset provision on payments of severance pay for service over 4 years when reemployed from zero to 48 months; include new grievance procedure; increase backpay limit for employees reinstated following discharge from 60 calendar days to 270 calendar days; add a 45-day time limit for the Union to notify management of its decision to arbitrate a discharge; discontinue union dues reductions when an employee is promoted to temporary or permanent supervisor; change the maximum yearly temporary supervisor upgrade time from 180 to 120 days in the calendar year; provide up to 22 bulletin boards for union posting; and prove an "evergreen" contract which continues indefinitely and allows negotiated improvements or updating at anytime and termination by either party with 60-day notice.

Many of these items were currently in effect at the time this offer was made including some of which had been put into effect prior to the beginning of negotiations in 1981. The Respondent also presented a list of minor word changes to update the old agreement and several items which were outside of the contract but under consideration by the Union. Those included a liberalized safety shoe policy; a procedure to provide payment for subpoenaed witnesses; a liberalized clerical detail procedure; a procedure for allowing volunteers on the fire brigade prior to filling open positions on an assigned basis; and a procedure to inform the Union about outside contractors.

The Respondent also made a proposal outside of the contract dealing with revising the policy regarding short vacation days on Sundays which the Union accepted. On the Union's proposal for an extra day off for perfect attendance the Respondent denied it.

After the Respondent mentioned this offer was fair and reasonable and contained those changes it was willing to make at that time the Union stated it would discuss it with its counsel and its membership.

The Respondent's records reflect that on July 9, 1982, the Union informed the Respondent that the Respondent's March 1982 proposal on a new safety shoe allowance had been accepted by the Union and that the Re-

spondent at the Union's request had initiated the policy effective July 19, 1982.

During the July 1, 1982, meeting medical insurance and its coverage of employees including that under a Health Maintenance Organization (herein referred to as HMO) and the fire brigade were discussed. The Union also informed the Respondent it would give its response to their contract offer after the next union meeting but said it was disappointed at the Respondent's proposal and felt there was nothing new included. The Respondent mentioned a number of changes were included and the Union should not overlook the fact liberalization had continued over the years even though the contract had expired. The Respondent further informed the Union that the job movement proposal was a very important part of its contract offer which it considered an absolute necessity for the future and requested the Union to seriously consider it.

The next meeting was held on July 13, 1982. The Respondent after reviewing the prior negotiation meetings and proposals regarding the fire brigade questioned the Union about whether it had a response to the Respondent's proposal. After the Union replied it had no response and that it must take it to the union membership, the Respondent withdrew its proposal and informed the Union the fire brigade would continue as it was but that the total will be reduced from 13 to 12 members. It also informed the Union it was always willing to consider and discuss the Union's proposal on the fire brigade.

Another meeting was held on August 10, 1982, at which those items outside of the contract, which had been proposed by the Respondent on June 11, including the liberalized safety shoe policy; clerical detail policy; payment procedure for subpoenaed witnesses; and outside contractors were discussed. On outside contractors the Respondent presented a procedure for notification and a notification form. At this meeting a modified notification form was agreed upon by the parties.

The Respondent's contract proposals were also discussed with the Union's stating it was unhappy and that the proposal did not address its needs. The Union also contended the language in the former contract was no good and the book should be thrown out while the Respondent's position was the terms and conditions of the expired agreement were still being followed and were working effectively. On job movement the Union objected to the 12-month restriction for lateral and downward moves proposed and stated the job movement proposal could not be accepted by the Union. The Respondent claimed it was necessary to improve efficiency. The Union also objected to the mechanics being included in the 12-month restriction. The Union then counterproposed to continue the current job movement procedure. According to Union Negotiator Empson their objections to the Respondent's proposal on job movement were they already had unlimited moves whereas the Respondent's proposal would limit them to one movement every 12 months and the only move the most senior employees had was a lateral move and the Union felt the Respondent was trying to take their rights away. The Respondent defended its contract proposal and stated it included several items requested by the Union but that it could not agree to other terms requested by the Union. During the meeting the Union also raised questions about the fire brigade training.

Another meeting was held on August 23, 1982. The Respondent informed the Union that effective September 1 the vacation plan for wage roll employees would be modified in two ways and furnished the Union with a copy of the change. These modifications were pointed out and discussed with the Union's raising various questions about the changes.

The Respondent rejected the Union's proposal to leave the job movement procedure as it was stating it was firm on the 12-month period which the Union objected to. It did agree, as suggested by the Union, to reconsider its position on preferred assignments and that they be excluded from limitations on job movement. The Union after a caucus counterproposed that job movement be limited to six moves within a 3-year period which the Respondent agreed to consider but indicated it probably would not be acceptable.

Union Negotiator Empson testified a preferred assignment was usually a daywork assignment which a shift worker had a chance to get and that under the Respondent's proposal if a person moved into a preferred job this would be counted as a move.

The next meeting was held on September 9, 1982. The Respondent denied the Union's earlier request to expand single days of vacation to include one-half days. It also rejected the Union's counterproposal that job movements be limited to six moves within a 3-year period because it would provide too much job movement and the Respondent's objective was to reduce training and plant transfers. The Respondent again asked the Union to consider its complete contract offer and distributed copies and reviewed each item. On job movement it stated it had reviewed the Union's concern about employees being involuntarily moved from daywork to shift work and was willing to clarify the situation by adding further definitions. This proposal provided that involuntary movement from daywork to shift work would not count as a job move and employees within a bid group who were involuntarily moved from daywork to shift work would have any job movement restriction eliminated which would prevent them from being accepted for another plant job. Further employees who had been notified their job was being eliminated and who bid out prior to being bumped would not have that job movement counted as a move under the procedure. The Respondent rejected the Union's request to change its proposal to provide for no restrictions on movement to preferred jobs.

During the meeting the Respondent also rejected the Union's request on other clothing changes such as underwear, sweatshirts, and styled jeans.

Another meeting was held on September 28, 1982. The Respondent in response to a union request for a short length-type jacket made offers to the Union regarding furnishing jackets which were then discussed. The Union advised that a vote would be held on the clothing proposal on September 29 and that the Respondent would be notified of the outcome. The Union also made a coun-

terproposal on job movement for three moves in 2 years and the removal of the 10-day trial restrictions as counting as a job move and stated it would agree to the proposal if the Respondent would agree that temporary upgrades to supervisor is a job movement and would be upgraded for a 12-month period. The Respondent indicated it would respond to this proposal at the next meeting.

The Respondent's records reflect that on September 20, 1982, the Union accepted the Respondent's proposal on jackets and that this was implemented effective October 1, 1982.

The next meeting was held on October 7, 1982. The Respondent rejected the Union's counterproposal on job movement made at the previous meeting. After reviewing the prior negotiating meetings it then submitted a proposal containing the following items, which had been included as part of its original proposal on June 11, 1982,[7] and stated it was willing to put them into effect immediately: In lieu of holiday allowance pay for a holiday worked, an employee may select another day off subject to holiday selection guidelines; allow shift workers to observe Saturday holidays on Saturday; change the holiday for Washington's birthday to the day after Thanksgiving; add spouse of son or daughter to death in family allowance for maximum of 8 hours; increase meal ticket from $3.50 to $4.50; and revise job movement procedure—employees may bid on any open job. However, an employee who has bid and been accepted for a permanent job will not be accepted for another permanent job for 12 months unless the job is a promotion or there are no other acceptable bids; increase the backpay limit for employees reinstated following discharge from 60 calendar days to 270 calendar days; add a 45-day time limit for the Union to notify management of its decision to arbitrate a discharge; and change the maximum yearly temporary supervisor upgrade time from 180 to 120 days in the calendar year.

Pursuant to the Union's inquiry the Respondent stated the "evergreen" provision which still apply as part of its proposal but explained that the above items being offered were not dependent on a signed contract and there was no point in including a length of contract provision. The Union indicated the proposal which would have to be approved by the membership looked acceptable except for the job movement proposal and it renewed it prior objections to that proposal. The Respondent informed the Union it did not intend to stop negotiations on some of those items if the Union rejected them and advised the Union it would continue as it had in the past to follow the terms of the expired agreement.

According to Donald Kafka, who is the employer relations superintendent for the plant and served as a negotiator for the Respondent, up until that time there had been about 40 negotiation meetings and he felt they were still far apart on getting an agreement which was the reason for this offer.

During a meeting held on October 12, 1982, the Union in response to questions by the Respondent about implementing several items proposed by the Respondent stated it was willing to accept the Respondent's proposal to increase the meal allowance from $3.50 to $4.50 and to change the funeral allowance provision by adding the spouse of son or daughter to the death in family allowance for a maximum of up to 8 hours and it would vote on the other proposals at an October 10, 1982 membership meeting.

According to Union Negotiator Empson the union membership voted and agreed to accept the Respondent's proposal offered on October 7, 1982, and to have them implemented except for those items regarding job movement and the change in the holiday for Washington's birthday, both of which proposals they rejected.

The next meeting was held on October 28, 1982. The Union informed the Respondent it had previously accepted the Respondent's proposal for an increase in the meal allowance from $3.50 to $4.50 and adding the spouse of son or daughter to the death in the family allowance for a maximum of up to 8 hours and at the last union meeting the other proposals were voted on and accepted by the Union except for the change in Washington's birthday and the job movement procedure provision. The Respondent pointed out the rejection to change Washington's birthday meant the plant would follow the procedure contained in the expired agreement.

The reasons given by the Union for rejecting the job movement procedure was because employees could now bid on any number of jobs with unlimited job movement and because the Respondent had refused to accept any changes to its job movement proposal which the Respondent disputed by pointing out several changes were proposed to its original proposal.

During the meeting the Union mentioned the job movement proposal and the contract language in the old agreement were the main items keeping them from signing the agreement and stated that the 10-day trial period should not be counted as a move in the job movement proposal.

The minutes of this meeting prepared by the Respondent which were not approved by the Union also reflect that the Union said, "if Management expects to implement this proposal at impasse then the Union will continually make counterproposals in an effort to block implementation." While both the Respondent's negotiators, Ferguson and Kafka, claimed the Union made such statement, Union Negotiator Empson denied it was said. Instead his explanation of what was said was they mentioned the Union could continue to submit counterproposals for the next 5 years and if management was not willing to take him serious and bargain with them they could never reach the agreement the Respondent wanted them to.[8]

Pursuant to the Union's request the Respondent, which reiterated the importance of its job movement proposal, agreed to funish information to the Union about the amount of job movement in the past.

[7] These were the only items among the 17 items on the Respondent's original proposal made on June 11, 1982, which had not already been implemented.

[8] Even assuming such statement was made by the Union as alleged it was only directed at attempting to block implementation if an impasse was reached and the evidence reveals the Union's counterproposals made during negotiations on the job movement procedure were concessions on its parts rather than mere efforts to delay negotiations.

The next meeting we held on November 17, 1982. Those items discussed included Washington's birthday and the guidelines for the postponed holiday allowance and the Union submitted a proposal on holiday pay. The Respondent also furnished the Union with information on past job movements in the plant. The Union again requested that the 10-day trial period not be counted as a job movement and counterproposed on job movement as follow: Two moves in 1 year; first 10-day trial not counted as a move; second 10-day trial counted as a move regardless of job acceptance or not; and all moves to supervision to permanent. This counterproposal was rejected by the Respondent whereupon the Union mentioned the Respondent had not accepted any proposed changes on job movement and accused the Respondent of refusing to bargain and also stated the discussion was deadlocked and could continue over the next 5 years by the Union continuing to make counterproposals. The Respondent responded by saying it would not continue discussions for the next 5 years and it would have to put the proposal into effect. The Union then mentioned that it might have to file a charge with the Board to stop the Respondent from implementing the proposal. Upon being asked by the Union whether it was willing to have a mediator for future job movement discussions and whether it was planning on implementing the job movement procedure at impasse the Respondent said it saw no reason for a mediator and felt the job movement proposal must be put into effect soon but promised to consider the Union's questions and to respond.

Another meeting was held on November 24, 1982. The Respondent rejected the Union's prior request for a mediator for job movement discussions. It stated in response the Union's inquiry about whether it planned to implement the job movement proposal at impasse that it was planning to bargain the proposal on job movement to an agreement and was optimistic about reaching an agreement with plans to put the procedure into effect on January 1, 1983. The Union renewed its request for information concerning the prior use of job movement which was then discussed. The Respondent repeated the procedure must be changed because of the present movement and the potential of unlimited movement and training. Objections were repeated by the Union to the job movement proposal and it stated it would continue to object if the Respondent maintained its position with the Respondent accusing the Union of raising objections to prevent putting the proposal into effect. The Respondent indicated it remained willing to sign its agreement as proposed but felt the job movement proposal must be put into effect and emphasized it would continue to follow the expired agreement. The Union renewed its objection that it would not sign an agreement with the contract language remaining the same. During this meeting the meal allowance procedure and the guidelines for holding negotiation meetings were also discussed.

On December 1, 1982, a meeting was held. Items relating to a rate increase in the insurance rates and the scheduling of grievances were discussed. Accusations were also made by the Union that the Respondent was not bargaining in good faith and was breaking the law and it mentioned filing a charge with the Board if the job movement proposal was implemented. While the minutes of this meeting prepared by the Respondent but not approved by the Union reflect the Union also mentioned shutting down part of the operations if the job proposal was implemented the Union at the next meeting denied having said it.

The minutes also reflect that the Union continued to say it would keep making counterproposals to block the Respondent's implementation of the job movement proposal which statement had previously been denied by the Union.

The next meeting was held on December 14, 1982, at which the Union's request for information concerning the prior use of job movement was discussed with the Respondent furnishing certain information and pointing out that other information requested was not maintained. The Respondent again stated it hoped the Union would agree to put the job movement proposal into effect on January 1. However, the Union objected and wanted answers to some more questions. There was also a discussion at the meeting about minutes kept by the Respondent of these meetings.

On December 16, 1982, a meeting was held and after the Respondent had informed the Union as requested how its job movement proposal would be administered the Union offered the following counterproposal on job movement: All employees may exercise seniority to bid on any open jobs; employees who have bid and been accepted for a permanent job will not be considered for another permanent job for a period of 12 months following the date of acceptance unless the job is a promotion or there are no other acceptable bids; a promotion is defined as an increase in an employee's straight time rate of pay or a job which allows employees a progression rate job or a preferred assignment (day or relief) job; an employee can utilize the 10-day trial one time in 12 months, not to count as a move but the second time to constitute a job movement and not be allowed to bid another permanent job for 12 months from that date; and limitations on job movement would be waived when "new jobs" are posted. A "new job" is defined as a job that did not previously exist in the area or in the plant. Increasing the number of existing jobs in a work group would not be considered a "new job"; involuntary movement such as bumping would not count as a move under the job movement system; and involuntary move from daywork to shift work would not count as a job move. In addition employees within a bid group who were involuntarily moved from day to shift work would have any job movement restrictions eliminated which would prevent them from being accepted for another plant job; management initiated moves—for jobs that are eliminated—the employee who bids out prior to being bumped would not have that job movement counted as a tabulation under the move procedure; and as incentive for giving up flexible unlimited job movement—management would agree to pay 10 cents an hour monetary seniority for every 2 years to people who stay in their present jobs, or who have stayed in their present jobs, plus all other previously agreed-to wages and, if an employee had previously held a job and does not need to be trained, would not

count as a job movement. The Respondent agreed to study this proposal and the Union also stated there were other contract items it wanted to negotiate and referred to the fire brigade and fire school.

The Respondent's records reflect that on December 20, 1982, the Respondent's negotiator, Ferguson, met with two union negotiators regarding clarification of the job movement proposal made by the Union on December 16. However, after reviewing the proposal he explained to them that the Respondent's position was clear that it was not willing to provide extra compensation for seniority on a job and he believed some training was required in all plant jobs.

Another meeting was held on December 21, 1982. The meeting opened with the Respondent's mentioning two minor changes to the pension and retirement plan effective January 1, 1983. The Respondent in response to those new provisions of the Union's counterproposal on job movement made at the December 16, 1982 meeting informed the Union it would not accept the proposed payment of 10 cents per hour for seniority, unlimited movement to jobs previously held if no training was involved, or the first 10-day trial period not to be counted as a move. On preferred assignment being considered as a promotion it indicated it was willing to include preferred assignment which would be defined as movement from shift work to a posted day or day/relief job as a promotion.

The Union also requested that the definition of preferred assignment cover senior employees bidding on jobs posted as subject to shift that included one or more daywork jobs which the Respondent rejected.

The Respondent then presented the Union with its updated summary of its job movement proposal and stated they were hoping to reach an agreement and implement the proposal on January 1. This proposal was as follows: Employees may bid on any open job. However, employees who have bid and been accepted for a permanent job will not be accepted for another permanent job for 12 months unless the job is a promotion or there are no other acceptable bids. Under this proposal and listed under the term "definitions" were the following: Internal moves within a job group are not covered; involuntary movement will not count as a move; movement from daywork to shift work will not count as a job move and employees within a bid group who are involuntarily moved from day to shift work would have any job movement restriction eliminated which would prevent them from being accepted for another plant job; employees who had been notified their job is being eliminated and who bid out prior to being bumped would not have that job movement count as a tabulated move under the procedure; bumping moves are considered involuntary moves; a promotion is defined as an increase in an employee's straight-time rate, a job which allows the employee to progress to a higher straight-time rate based on a progression system or movement to shift work to a posted day or day/relief job; and limitations on job movement would be waived when "new jobs" are posted and a "new job" is defined as a job that did not previously exist in the area or in the plant and increasing the number of existing jobs in a work group would not be considered a "new job."

The next meeting was held on December 30, 1982. Following discussion about the Union's December 16, 1982 proposal on job movement and about what changes the Respondent had made in its original proposal the Union asked the Respondent what it planned to do whereupon the Respondent said it planned to implement the job movement proposal on January 1 and hoped the Union would agree to it. Following a caucus the Union added the following two additional items to its counterproposal on job movement: Allow a banking of one move for every 3 years a person is in a job without moving to be added to the one move per year a person could take within a 12-month period; and give a 10-day trial period for every 6 months—not to count as a job movement. The Respondent rejected this proposal on the grounds the Union was still asking for more moves than the Respondent's proposal allowed and stated the job movement must be limited as proposed by the Respondent for the good of the plant. Pursuant to the Union's questions the Respondent informed the Union that neither temporarily upgrading an employee to supervision nor bringing him back to wage roll counted as a move.

The Union informed the Respondent it wanted to discuss other things at these meetings and requested proposals from the Respondent at the next meeting on the fire brigade and a wage offer.[9]

The last negotiation meeting was held on January 6. At this meeting the Respondent furnished the Union with a copy of its same proposal on job movement given to the Union at the December 21, 1982, meeting and informed the Union there were no changes in the procedure; however, it included the last change discussed with the Union about movement to a preferred job. The Respondent then informed the Union over the Union's objections that it was putting the Respondent's job movement proposal into effect on January 9, 1983.

Upon the Union's asking the Respondent whether it had a proposal on the fire brigade the Respondent indicated it was only prepared at that time to discuss job movement.

The Respondent's job movement proposal was implemented on January 9 without the agreement of the Union. The Respondent's negotiator, Kafka, testified that the procedure was implemented because the Respondent felt it had been discussed thoroughly and it incorporated a number of things that had been agreed upon; the need to make efficiencies because of economic problems; the Union's proposals were just reiterating its position and trying to block implementation; and it could see no value of having more meetings or any prospect of getting an agreement on it.

Those changes from its original proposal in the job movement procedure as described by Kafka were: a person involuntarily moved from day to shift work would get the job movement slate wiped clean; a person moved from shift work to a posted day or relief job or preferred job would be counted as a promotion and not

[9] Prior to this time there had been no discussion of wages.

as a job move; and a management initiated move where a person after being notified he would be bumped from his job bid on another job before being bumped would not count as a move.

C. *Analysis and Conclusions*

The General Counsel's position is that the Respondent unlawfully refused to bargain with the Union in violation of Section 8(a)(1) and (5) of the Act by unilaterally, without affording the Union the opportunity to negotiate and bargain, instituting a change in its rules concerning job movement of unit employees at the Plant. The Respondent denies such contentions and asserts as a defense that an impasse had been reached in negotiations at the time the job movement procedure was changed.

Section 8(a)(1) of the Act prohibits an employer from interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act. Section 8(a)(5) of the Act prohibits an employer from refusing to bargain collectively with the representative of its employees.

The law is well settled that an employer violates Section 8(a)(5) and (1) of the Act when during the course of negotiations with its employees' bargaining representative, and at a time no impasse exists, it institutes unilateral changes in the terms and conditions of employment of its unit employees. *NLRB v. Katz*, 369 U.S. 736 (1962). This is true even where the Union has been afforded notice and an opportunity to bargain about such change. *Winn-Dixie Stores*, 243 NLRB 972 (1979). Neither economic expediency nor sound business considerations are sufficient defenses to justify unilateral changes in terms and conditions of employment. *Van Dorn Plastic Machinery Co.*, 265 NLRB 864 (1982).

For an impasse to be found in negotiations the parties must have reached "that point of time in negotiations when the parties are warranted in assuming that further bargaining would be futile." *The Old Man's Home of Philadelphia*, 265 NLRB 1632 (1982); and *Patrick & Co.*, 248 NLRB 390, 393 (1980), enfd. mem. 644 F.2d 889 (9th Cir. 1981). Those factors to be considered in determining whether a bargaining impasse exists, which is a matter of judgment, include the bargaining history, good faith of the parties in negotiations, length of negotiations, the importance of issues to which there is disagreement, and the contemporaneous understanding of the parties as to the state of negotiations. *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), enfd. 395 F.2d 622 (D.C. Cir. 1968).

The findings supra establish that during negotiations between the Respondent and the Union for a new collective-bargaining agreement covering the unit employees the Respondent on January 9, over the Union's objections, unilaterally changed the existing job movement procedure at the plant by putting into effect its own proposal on the job movement procedure which had been discussed with but had not been agreed to by the Union. The new job movement procedure, with certain limited exceptions, prohibits employees who have bid on and been accepted for a permanent job from being accepted for another permanent job for 12 months unless the job was a promotion or there were no other acceptable bids. This was a substantial change in the existing terms and conditions of employment of the unit employees who up until that time had no limit on the number of times they could move to other jobs. Under the terms of the old collective-bargaining agreement which the parties had continued to abide by since its expiration in 1974 job vacancies were posted and bid on by the employees and were awarded on the basis of such factors as seniority, ability, skill, efficiency, knowledge and training, and physical fitness. Those applicants selected were given a 30-day trial period and if they did not perform satisfactorily they were returned to their old jobs and employees could also elect on their own during the first 10 days on their new jobs to return to their old jobs.

Regarding the impasse defense raised by the Respondent an examination of the evidence pertaining to those factors considered by the Board in determining whether an impasse exists refutes any contention an impasse was reached in negotiations in the instant case. The bargaining history reveals that since the last collective-bargaining agreement expired in 1974 the parties on several occasions prior to the most recent bargaining negotiations had attempted unsuccessfully to negotiate a new collective-bargaining agreement. The good faith of the Respondent in negotiations was not an issue at the hearing and therefore such factor will not be considered.[10] On the length of negotiations, while they took place over a period of approximately 14 months excluding the approximate 6-month period in which negotiations were suspended because of the representation petition's being filed, and involved 47 meetings, these meetings themselves each only lasted a few hours or less and it was not until the 30th negotiation meeting that the Respondent presented its own contract proposal. Further, at the time of the last meeting the Respondent, although requested by the Union to do so, had neither submitted its wage proposal nor had wages even been discussed. With respect to the importance of the issues of disagreement there were serious issues still open concerning the job movement procedure as well as other outstanding unresolved issues when the Respondent unilaterally implemented the change in the job movement procedure.

The remaining factor, i.e., the contemporaneous understanding of the parties, applied to facts here further demonstrates no impasse was reached. From the time the Respondent first presented its proposal to change the job movement procedure at the 30th negotiation meeting the Union made a number of counterproposals including one made at the meeting held immediately preceding the meeting at which the Respondent announced it was going to implement its own job movement proposal. Under such counterproposals the Union would agree to limit the employees previously unrestricted number of job moves notwithstanding the Respondent, except for a few concessions, adamantly insisted on obtaining an agreement on its own proposal. Thus, the Union's contin-

[10] To the extent the Respondent argues in its brief that the Union was not acting in good faith because of its statements about offering counterproposals to the job movement procedure discussed previously and by offering such proposals, I do not find such argument persuasive for those reasons previously indicated.

ued movement on this issue until the change was unilaterally made and implemented by the Respondent negates any conclusion assumed by the Respondent that an impasse had been reached at that point.

Under these circumstances and for the reasons discussed, I am persuaded and find that the Respondent unlawfully refused to bargain with the Union as the exclusive representative of the unit employees at the plant by, on January 9 and at a time when no bargaining impasse existed, unilaterally changing the existing job movement procedure of the unit employees and thereby violated Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, found to constitute unfair labor practices occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

CONCLUSIONS OF LAW

1. E. I. du Pont de Nemours & Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. DuPont Newport Union is a labor organization within the meaning of Section 2(5) of the Act.
3. All employees employed by the Employer at its Newport, Delaware plant; excluding salary roll employees exempt under the provisions of the Fair Labor Standard Act, temporary or part-time employees, watchmen, secretaries to the plant manager, manufacturing manager and plant technical superintendent, clerical employees in the employee relations department, plant nurses, guards and supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. The DuPont Newport Union is now and at all times material herein has been the exclusive representative of all the employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.
5. By refusing to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all of its employees in the appropriate unit, by, on January 9, 1983, at which time no impasse in bargaining existed, unilaterally changing the existing job movement procedure, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act. Accordingly, having found that the Respondent on January 9, 1983, unilaterally changed the job movement procedure of its unit employees, I shall order it to restore the job movement procedure as it existed prior to the change on January 9, 1983, and to bargain with the Union before making any changes in the job movement procedure or in the wages, hours, and other terms and conditions of employment of its unit employees. To restore the status quo ante as it existed prior to this unlawful change on January 9, 1983, I shall order the Respondent to give those unit employees, if any, who were denied the opportunity to bid on other jobs as a result of this change in the job movement procedure, to bid on those jobs they would have been entitled to have bid on since January 9, 1983, under the job movement procedure as it existed prior to January 9, 1983.

[Recommended Order omitted from publication.]